

***United States Court of Appeals
for the Second Circuit***



APPENDIX

74-2690

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

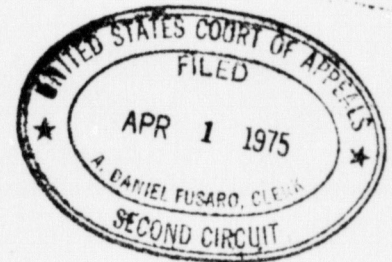
STATE OF CONNECTICUT,
COMMISSIONER OF FINANCE AND CONTROL

Plaintiff-Appellant

v.

LEONARD CRISP

Defendant-Appellee



ON APPEAL FROM A DECISION OF THE
UNITED STATES DISTRICT COURT,
DISTRICT OF CONNECTICUT

JOINT APPENDIX

Appellant:

Carl R. Ajello
Attorney General
30 Trinity Street
Hartford, Connecticut

Edward F. Pasiecznik
Assistant Attorney General
90 Brainard Road
Hartford, Connecticut

Appellee:

Kataline Roth
Legal Clinic - School of Law
University of Connecticut
Greater Hartford Campus
West Hartford, Connecticut

PAGINATION AS IN ORIGINAL COPY

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CRISP		LEONARD		DIST. NO.	205	2	FILE NO.	H-74-111
Last		First		MIDDLE				
ADDRESS OF BANKRUPT/DEBTOR (Number and Street)				DATE PETITION FILED		3-74		
				DATE CLOSED				
				DISCHARGE		<input checked="" type="checkbox"/> Granted <input type="checkbox"/> Denied <input type="checkbox"/> Waived or not applied for		
				DATE DISCHARGED				
Foreign State Hospital Guttenberg, New York				PETITION DISMISSED?		<input type="checkbox"/> YES <input type="checkbox"/> NO		
				DATE DISMISSED				
				NAME OF JUDGE				
				NAME OF REFEREE				
CITY	ZONE	COUNTY	STATE	NO ASSET CASES ONLY CLAIMS AS SCHEDULED <input checked="" type="checkbox"/> TOTAL \$ PRIORITY \$ SECURED \$ UNSECURED \$				
Hartford		Fair Haven	Conn.					

ATTORNEY FOR BANKRUPT OR DEBTOR	NAMES AND ADDRESSES Nathan Roth, University of Connecticut School of Law Legal Clinic, 120 Asylum Avenue, West Hartford, Conn. 06114
ATTORNEY FOR PETITIONING CREDITORS	Atty for Appellant: Edward F. Pasiecznik, Asst. Atty General, 90 Brainard Rd., Hartford, Conn. 06114
RECEIVER	
ATTORNEY FOR RECEIVER	
TRUSTEE	
ATTORNEY FOR TRUSTEE	
CHANGES OF PRINCIPALS	

DATE	PROCEEDINGS
1974	
3-6	Petition and schedules filed at 12:55 p.m.
3-8	Order of reference, entered. (W. J. Clarke, C.)
9-16	Notice of Appeal of State of Connecticut, Commissioner of Finance & Control vs. Leonard Crisp transmitted from Bankruptcy Office. Assigned to Judge Clarie. Notice mailed to Attys.
10-1	Plaintiff, State of Connecticut's Appeal from Discharge of Def. Brief of Appellant filed by Ed. Pasiecznik.
10-15	Appellee's Brief in Opposition to Appellant's Objections to Discharge filed by Atty. Roth. Notice to Counsel mailed.
11-6	Request for Oral Argument received by phone.
11-18	Hearing on Appeal. Decision reserved.
11-20	Appearance of William Mowby, Law Student, entered for Appellee.
11-21	Ruling on Petition for Review (Clarie, J.) M 11-22-74. "The Order of the Bankruptcy Judge be, and the same hereby is, confirmed. Petition

for Review should be denied." Copies mailed to counsel.

11-21 ~~Record on Appeal returned to Bankruptcy Office~~

11-18 Letr dated June 20, 1974 from H. Marsh to L. Crisp, Exhibit A filed in Court.

12-19 Notice of Appeal filed by Edward F. Pasiecznik, Asst. Atty. Gen., State of Connecticut. Copies mailed to counsel.

12-20 Certified copy of Notice of Appeal and certified copy of docket sheet mailed to Court of Appeals. Copies of letter, with C & D copies of Mgmt. Plan, mailed to Edw. Pasiecznik.

12-23 Record on Appeal sent to New Haven.

1975

1-14 Court Reporter's Transcript of Hearing held November 18, 1974 filed in Hartford (Sperber, R.)

IN THE MATTER OF :
: BANKRUPTCY NO. H-74-111
LEONARD CRISP :

DOCUMENT NO.

Copy of Docket Entries	A
Court Reporter's Transcript of proceedings of November 18, 1974	1
Petition and Schedules filed March 8, 1974	2
Discharge of Bankrupt	3
Proof of Claim -State of Connecticut	4
Petition for Determination of Dischargeability of Debt	5
Notice of Hearing on July 18, 1974	6
Letter dated June 20, 1974 from Henry W. Marsh, III to Leonard Crisp-marked Exhibit A, July 18, 1974	7

Motion to Dismiss	8
Memorandum and Order Re: Dischargeability	9
Notice of Appeal to District Court	10
Plaintiff, State of Connecticut's Appeal From Discharge of Defendant, Leonard Crisp	11
Leonard Crisp's Amendments and Additions to the Request for Findings and Statement of Record on Appeal by The Plaintiff, State of Connecticut	12
Plaintiff's Exhibit A filed November 18, 1974	13
Ruling on Petition for Review	14
Law Student Intern Appearance Form of William E. McCoy	15
Notice of Appeal filed December 19, 1974	16
Clerk's Certificate	17

United States District Court

For the _____ District of Connecticut

In re Edward Crisp
 Governor's House
 Norwich State Hospital
 Preston, Connecticut

Bankruptcy No. BKF E-74-111

Bankrupt *

PROOF OF CLAIM

1. *[If claimant is an individual claiming for himself]* The undersigned, who is the claimant herein, resides at **

[If claimant is a partnership claiming through a member] The undersigned, who resides at **
 is a member of _____, a partnership,
 composed of the undersigned and _____,
 of ** _____, and
 doing business at **/ _____,
 and is authorized to make this proof of claim on behalf of the partnership.

[If claimant is a corporation claiming through an authorized officer] The undersigned, who resides at **
 is the _____ of _____,
 a corporation organized under the laws of _____,
 and doing business at ** _____,
 and is authorized to make this proof of claim on behalf of the corporation.

[If claim is made by agent] The undersigned, who resides at ** 76 Meadow Street,
 East Hartford, Connecticut 06108 _____, is the agent of the Sovereign
 State _____ of ** Connecticut _____, and is
 authorized to make this proof of claim on behalf of the claimant.

2. The bankrupt was, at the time of the filing of the petition initiating this case, and still is indebted [or liable] to this claimant, in the sum of \$1,623.65

3. The consideration for this debt [or ground of liability] is as follows:
 See Statement of Objection attached

4. *[If the claim is founded on writing]* The writing on which this claim is founded (or a duplicate thereof) is attached hereto *[or cannot be attached for the reason set forth in the statement attached hereto]*.

5. *[If appropriate]* This claim is founded on an open account, which became *[or will become]* due on July 1, 1972, as shown by the itemized statement attached hereto.

Unless it is attached hereto or its absence is explained in an attached statement, no note or other negotiable instrument has been received for the account or any part of it.

6. No judgment has been rendered on the claim ~~except~~

7. The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim. \$70.00 has been paid on total charges of \$1,693.65

8. This claim is not subject to any setoff or counterclaim ~~except~~

9. No security interest is held for this claim ~~except~~

[If security interest in property of the debtor is claimed] The undersigned claims the security interest under the writing referred to in paragraph 4 hereof *[or under a separate writing which (or a duplicate of which) is attached hereto, or under a separate writing which cannot be attached hereto for the reason set forth in the statement attached hereto]*. Evidence of perfection of such security interest is also attached hereto.

10. This claim is a general unsecured claim, except to the extent that the security interest, if any, described in paragraph 9 is sufficient to satisfy the claim. *[If priority is claimed, state the amount and basis thereof.]*

Dated: _____

Signed: _____

Penalty for Presenting Fraudulent Claim. Fine of not more than \$5,000 or imprisonment for not more than 5 years or both—Title 18, U.S.C., § 152.

United States District Court

District of Connecticut

In the matter of
Leonard Crisp
Gateway House
Norwich State Hospital
Preston, Connecticut

Bankruptcy No. BKY H-74-111

Application of State of Connecticut
Department of Finance and Control
Division of Central Collections
76 Newbury Street
East Hartford, Connecticut 06108

Leonard Crisp, age 47, was first admitted to Norwich Hospital, Preston, Connecticut on February 9, 1957. He was admitted and discharged on several occasions in the interim. The most recent admission was on May 3, 1973 and he continues to be a patient at the hospital. In November of 1970, he became eligible for a Social Security Disability award and billing was established against these benefits at the rate of \$4.15 per diem. In June of 1971, the Social Security Administration increased his award and billing was increased to \$4.565 per diem. Billing was established in accordance with the provisions of Section 17-295 of the Connecticut General Statutes. The per diem charges represented only a portion of the per capita costs of operating this State operated facility.

The State of Connecticut objects to the inclusion of this item in the list of indebtedness that the petitioner requests to be discharged for the following reasons:

1. The indebtedness was accrued for care and treatment at a State operated facility.
2. Patients with similar recurring income are billed and are expected to pay as is provided in Section 17-295 of the Connecticut General Statutes. Failure to expect the same of the Petitioner would constitute an act of discrimination on the part of the State of Connecticut.

3. While the Petitioner continues to be a resident of Norwich Hospital his condition has improved to the point where he is now employed on a full time basis in the capacity of a custodian at Helikon of Connecticut, Inc., 16 Thames Street, Norwich, Connecticut. The claimant is of the opinion that the Petitioner's fiscal status has improved considerably and is now in a position to meet the obligation to the State of Connecticut on a deferred payment basis.

COMMISSIONER OF FINANCE AND CONTROL

BY Charles B. Roark
Charles B. Roark, Director

The foregoing was acknowledged before me this 11th day of April, 1974, by Charles B. Roark, Director, Division of Central Collections, State of Connecticut.

[Signature]
Notary Public

My Commission Expires 3-21-76

CONNECTICUT
 DEPARTMENT OF FINANCE & CONTROL
 DIVISION OF CENTRAL COLLECTIONS

CRISP, LEONARD

PATIENT'S NAME

LEONARD CRISP

PAYER'S NAME

13-038598-1

ACCOUNT NUMBER

Date

April 2, 1974

~~Reimbursement of Itemized Statement~~

Hospital Horwich Hospital
 Date Adm. 10/16/70
 Date billing com. 11/1/70

Date of Discharge _____
 (Final balances only)
 Are there other accounts currently billed?
 Yes X No _____

From	Date To	No. of Days	Rate	Charges	Payments	Balance Due
11/1/70	2/28/71	45	4.15	186.75		
1971	March	29	4.15	120.35		
	April	3	4.15	12.45	70.00	
	June	6	4.565	27.39		
7/11/71	12/31/71	113	4.565	515.86		
1/1/72	6/30/72	182	4.565	830.85		
				<u>1693.65</u>	<u>70.00</u>	\$1,623.65

PREPARED BY Bertha Skowronski

AUDITED AND APPROVED BY

Samuel Dalmonte

United States District Court

DISTRICT OF CONNECTICUT

CHAMBERS OF
SAUL SEIDMAN
BANKRUPTCY JUDGE

May 13, 1974

U. S. COURTHOUSE
450 MAIN STREET
HARTFORD, CONN. 06103
TEL. 244-2480

Mr. Charles B. Roark, Director
State of Connecticut
Department of Finance & Control
76 Meadow Street
East Hartford, Conn. 06108

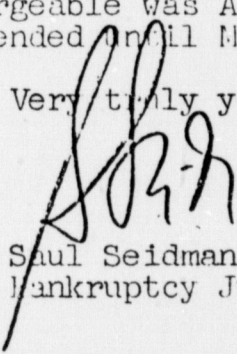
Dear Mr. Roark:

Re: Leonard Crisp - H 74-111

The affidavit which you filed in the above matter was apparently intended as a complaint to declare your debt nondischargeable. However, if it was so intended, it is not in proper form. The requirements for a complaint to have a debt declared nondischargeable are set forth in Bankruptcy Rules 701 in et seq. There is a filing fee of \$15.00.

The last day for filing a complaint to declare a debt nondischargeable was April 30, 1974, but the time will be extended until May 24, 1974.

Very truly yours,


Saul Seidman
Bankruptcy Judge

SS:jn

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF CONNECTICUT

In re

LEONARD CRISP, BANKRUPT

COMMISSIONER OF FINANCE & CONTROL

V.

LEONARD CRISP

Bankruptcy No. BKX 74-111

PETITION FOR DETERMINATION OF DISCHARGEABILITY OF DEBT

The Commissioner of Finance and Control, State of Connecticut, hereby represents to the Court as follows:

1. That on February 9, 1957, the bankrupt Leonard Crisp was first admitted to Norwich Hospital, Preston, Connecticut. He was admitted and discharged on several occasions in the interim. The most recent admission was on May 3, 1973 and he continues to be a patient at the hospital. In November of 1970 he became eligible for a Social Security Disability Award and billing was established against these benefits at the rate of \$4.15 per diem. In June of 1971, the Social Security Administration increased his award and billing was increased to \$4.565 per diem. Billing was established in accordance with the provisions of Section 17-295 of the Connecticut General Statutes. The per diem charges represented only a portion of the per capita costs of operating this State operated facility.

2. The indebtedness was accrued for care and treatment at a State operated facility.

3. Patients with similar recurring income are billed and are expected to pay as is provided in Section 17-295 of the Connecticut General Statutes.

Failure to expect the same of the Petitioner would constitute an act of discrimination on the part of the State of Connecticut.

4. While the Petitioner continues to be a resident of Norwich Hospital his condition has improved to the point where he is now employed on a full time basis in the capacity of a custodian at Helikon of Connecticut, Inc., 18 Thames Street, Norwich, Connecticut. The claimant is of the opinion that the Petitioner's fiscal status has improved considerably and is now in a position to meet his obligation to the State of Connecticut on a deferred payment basis.

FILED

RECEIVED

MAY 21 1974

MAY 21 1974

SAUL SEIDMAN
BANKRUPTCY JUDGESAUL SEIDMAN
BANKRUPTCY JUDGE

-2-

Wherefore, the petitioner prays:

1. An order declaring that such debt is not discharged by these bankruptcy proceedings.
2. Judgment for the balance due on said debt as indicated in the petitioner's Proof of Claim.
3. Such other orders as are necessary for the enforcement thereof.

Dated May 20, 1974

COMMISSIONER OF FINANCE AND CONTROL

BY

Charles B. Roark

Charles B. Roark, Director

Service by mail certified to:

Leonard Crisp
Gateway House
Norwich State Hospital
Ipswich, Connecticut

AFFIDAVIT OF SERVICE

I, Janet H. King

, being duly sworn deposes and

says:

she

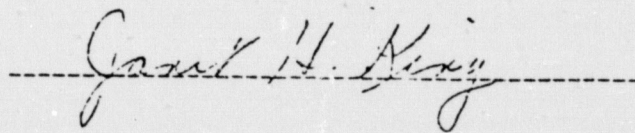
That he is, and at all times hereinafter mentioned was, more than 18 years of age;

That on the 21st day of May 1974 ,

he served the within summons and notice of trial, together with the complaint filed in this proceeding, on Leonard Crisp

the defendant in this proceeding by *[describe here the mode of service and, if by mail, attach the signed receipt]* Certified Mail

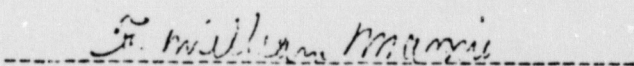
the said defendant at Gateway House, Norwich Hospital, Preston, Connecticut



Subscribed and sworn to before me on June 5, 1974

[SEAL]

FPI-MI-7-19-73-75M-856



Notary Public

My Commission expires 3-31-79

FWM
Z
CBLUNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

May 21, 1974

Mr. Charles B. Roark, Director
State of Connecticut
Finance & Control
76 Meadow Street
East Hartford, Conn.

Dear Mr. Roark:

Re: Commissioner of Finance & Control v. Leonard Crisp
H 74-111

A creditor seeking to have its debt declared nondischargable must advance a fee of \$33.00 for the court reporter. If the creditor prevails, the advanced cost will be added to the amount of the judgment.

Please bring a check in the amount of \$33.00 to the hearing to be scheduled for June 27, 1974.

Very truly yours,

Saul Seidman
Bankruptcy Judge

SS:jn

United States District Court

For the _____ District of CONNECTICUT

In re

LEONARD CRISP

Bankrupt

STATE OF CONN., COMMISSIONER OF
FINANCE & CONTROL

Plaintiff

v.

LEONARD CRISP

Defendant

Bankruptcy No. H 74-111

SUMMONS AND NOTICE OF TRIAL

To the above-named defendant:

You are hereby summoned and required to serve upon

Charles Roark

, ~~plaintiff's attorney~~ whose

address is State of Conn., Finance and Control, 76 Meadow St., E. Htfd., Ct.

a motion or an answer * to the complaint which is herewith served upon you, on or before

June 17, 1974

, and to

file the motion or answer with this court not later than the second business day thereafter. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

You are hereby notified that trial of the proceeding commenced by this complaint has been set

for June 27, 1974

, at 10:00

o'clock

a.m., in U.S. Bankruptcy Court, Room 262, 450 Main Street,
Hartford, Connecticut

SAUL SEIDMAN

Bankruptcy Judge

By:

Celeste C. Doyle
CELESTE C. DOYLE, CHIEF CLERK

Address:

450 Main Street

Hartford, Connecticut

Date of issuance: May 21, 1974

* If you make a motion, as you may in accordance with Bankruptcy Rule 712, that rule governs the time within which your answer must be served.

12-10

MIDDLESEX COUNTY COURT

DECLARATION OF
BANKRUPTCY

Case No. _____ District of CONNECTICUT

In re:

<u>Name of Debtor</u>	<u>Bankruptcy Case Number</u>	<u>Date Petition Filed</u>
WILLIAM C. ROSS and PATSY RAY ROSS 15 Flint Court Groton, Connecticut	H-74-153	3/21/74
RAYOLA ANN CYR Bogue Road Harwinton, Connecticut	H-74-155	3/21/74
LUIS MANUEL RIVERA 146 Hobart Street Meriden, Connecticut	H-74-156	3/21/74
JAMES ALBERT KALBER and SANDRA LUCILLE KALBER 130 Vernon Avenue Vernon, Connecticut	H-74-157	3/21/74
*X LEONARD CRISP Norwich State Hospital Gateway House Norwich, Connecticut	H-74-111	3/8/74

DISCHARGE OF BANKRUPT

It appearing that the person whose name is marked on the above list was duly adjudged a bankrupt on a petition filed on the date shown after his name and case number, and that no complaint objecting to discharge was timely filed [or that a complaint objecting to his discharge was filed and, after due notice and hearing, was not sustained]; it is ordered that

1. The bankrupt whose name is marked on the above list is released from all dischargeable debts.
 2. Any judgment heretofore or hereafter obtained in any court other than this court is null and void as a determination of the personal liability of the said bankrupt with respect to any of the following: (a) debts dischargeable under § 17a and b of the Bankruptcy Act; (b) unless heretofore or hereafter determined by order of this court to be nondischargeable, debts alleged to be excepted from discharge under clauses (2) and (4) of § 17a of the Act; (c) unless heretofore or hereafter determined by order of this court to be nondischargeable, debts alleged to be excepted from discharge under clause (8) of § 17a of the Act, except those debts on which there was an action pending on the date when the petition was filed specified above in which a right to jury trial existed and a party has made a timely demand therefor; (d) debts determined by this court to be discharged under § 17c(3) of the Act.

3. All creditors whose debts are discharged by this order and all creditors whose judgments are declared null and void by paragraph 2 above are enjoined from instituting or continuing any action or employing any process to collect such debts as personal liabilities of the bankrupt whose name is marked on the above list.

DATED: June 4, 1974

SAUL SEIDMAN

 Bankruptcy Judge

*X

TO CREDITORS:

ONLY THE BANKRUPT WHOSE NAME IS MARKED
ABOVE HAS LISTED YOU AS A CREDITOR

BK-10

United States District Court

FOR THE
DISTRICT OF CONNECTICUT

IN THE MATTER OF

LEONARD CRISP

IN BANKRUPTCY
NO. H 74-111

Bankrupt.

REASSIGNED

NOTICE OF MEETING OF CREDITORS OR HEARING

NOTICE IS HEREBY GIVEN THAT:

- ☐ A meeting of creditors of the above-named bankrupt,
☒ A hearing in said cause,

will be held at U.S. Bankruptcy Court, Room 262, 450 Main Street in the
 city of Hartford, State of Connecticut, on the
 18th day of July, 1974, at 10:00 o'clock A. M., to consider and act
 upon the following matters:

REASSIGNED TRIAL DATE:

STATE OF CONN., COMMISSIONER OF FINANCE & CONTROL v.
 LEONARD CRISP

and transact such other business as may properly come before the meeting.

Dated at Hartford, Conn., June 10, 1974

SAUL SELLMAN

~~Referees~~ Bankruptcy Judge

FPI ATLANTA—5-13-63—SOM—4147

BY:

Celeste C. Doyle

CELESTE C. DOYLE, CH. F. CLERK

- cc: Charles Roark, Director of Finance
 and Control - State of Conn.
 Katalin Roth, Esq.

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

In re

LEONARD CRISP, BANKRUPT	:	
	:	
	:	
COMMISSIONER OF FINANCE	:	
AND CONTROL, STATE OF	:	
CONNECTICUT,	:	
Plaintiff	:	
	:	
VS. /	:	Bankruptcy No. H-74-111
	:	
LEONARD CRISP,	:	
Defendant	:	

MOTION TO DISMISS

Pursuant to Rule 7, Federal Rules of Civil Procedure, and Rule 707 of the Federal Bankruptcy Rules, the defendant Leonard Crisp respectfully moves this Court to dismiss the instant action for the following reasons:

1. The petitioner, Commissioner of Finance and Control, State of Connecticut, has failed to state any claim cognizable under the Bankruptcy Act.

2. The debt for which the petitioner Commissioner of Finance and Control seeks an exemption from discharge in bankruptcy is a debt for state-subsidized medical services, a category which is not covered by any of the exemptions contained in the Bankruptcy Act, Section 17 (11 U.S.C. §35).

3. Petitioner Commissioner's claim that Connecticut General Statutes §17-295 supersedes the Federal Bankruptcy Act directly contradicts and violates Article VI, Section 2 (Supremacy Clause) of the United States Constitution.

Page 2

4. The petitioner Commissioner of Finance and Control was duly notified of the filing of a petition in bankruptcy by the defendant bankrupt Leonard Crisp, in accordance with Section Fourteen of the Bankruptcy Act (11 U.S.C. §32), and because of his failure to contest discharge at the appointed time, the petitioner has waived his right to now challenge the discharge of the defendant in bankruptcy. The petitioner does not allege that the defendant's discharge was obtained under any of the conditions enumerated under Section Fifteen of the Bankruptcy Act (11 U.S.C. §33), and hence may not rely upon said section for his present claim.

WHEREFORE, the defendant prays:

1. A dismissal of the instant claim, or, in the alternative, summary judgment in defendant's favor, pursuant to Rule 56, F.R.C.P.
2. Such other relief as may be necessary for the enforcement thereof.

Dated at West Hartford, Connecticut, this 2nd day of July, 1974.

THE DEFENDANT

BY

Katalin Roth
Attorney for Leonard Crisp

A true and attested copy of the foregoing has been mailed, postage prepaid, to Charles B. Roark, Director, State of Connecticut, Commission of Finance and Control, 76 Meadow Street, East Hartford, Connecticut.

Katalin Roth, Esq.

Page 3

ORDER

The foregoing motion having been duly heard, it is hereby ORDERED that the Petition of the Commissioner of Finance and Control, State of Connecticut, for Determination of Dischargability of Debt be dismissed and judgment be entered for the defendant Leonard Crisp.

Bankruptcy Judge

Department of Finance and Control
Division of General Collections

Manual of Policies and Procedures
Chapter IV

BILLING

Per Capita Costs

400

Tables for Per Capita Costs - Mental Health Facilities (Per Diem Rate)

<u>From</u>	<u>To</u>	<u>Conn. Valley Hosp.</u>	<u>Norwich Hosp.</u>	<u>Fairfield Hills Hosp.</u>
9/1/55 -	8/31/56	\$ 4.283	\$ 4.584	\$ 4.039
9/1/56 -	8/31/57	4.737	5.123	4.637
9/1/57 -	8/31/58	5.191	5.736	4.897
9/1/58 -	8/31/59	5.757	6.016	5.497
9/1/59 -	8/31/60	6.017	6.543	5.830
5/1/60 -	8/31/61	6.236	7.037	6.173
9/1/61 -	8/31/62	6.623	7.350	6.614
9/1/62 -	8/31/63	7.150	7.72	6.763
9/1/63 -	8/31/64	7.303	7.846	6.954
9/1/64 -	8/31/65	7.669	8.134	7.287
9/1/65 -	8/31/66	8.837	8.973	7.557
9/1/66 -	8/31/67	11.444	10.366	8.364
9/1/67 -	8/31/68	13.817	12.333	8.857
9/1/68 -	8/31/69	17.973	16.361	10.264
9/1/69 -	8/31/70	21.629	20.453	11.926
9/1/70 -	11/30/71	22.429	24.096	13.633
12/1/71 -	11/30/72	27.120	29.460	18.430
12/1/72 -	11/30/73	30.00	31.95	21.72
12/1/73 -		31.80	33.87	23.02

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

In The Matter Of:	:	
LEONARD CRISP,	:	In Bankruptcy
Bankrupt	:	No. H-74-111

STATE OF CONNECTICUT, COMMISSIONER OF
FINANCE & CONTROL, Plaintiff

V.

LEONARD CRISP, Defendant

MEMORANDUM AND ORDER

RE: DISCHARGEABILITY

During the period from November 1, 1970 to June 30, 1972, the bankrupt was hospitalized at Norwich Hospital, a state-maintained humane institution. Section 17-295 of the Connecticut General Statutes provides that from the date of admission, each patient is legally liable for his support in accordance with his ability to pay. The statute further provides that the maximum rate to be charged shall be the per capita cost, and that the unpaid balance of any amount billed for service may be recovered at a later date. The bankrupt had been admitted to Norwich Hospital prior to November, 1970, but having no income, he had not been billed. He became eligible for Social Security Disability Benefits in November, 1970, at which time, billing was established in accordance with the provisions of the statute at a minimum charge: \$4.15 during the period November, 1970, through March, 1971, and \$4.565 from June, 1971 to June 30, 1972. The total charge for which he was billed was \$1,693.65, and a payment of \$70.00 was received, leaving a balance of \$1,623.65.

After June 30, 1972 and to the present time, the bankrupt has continued to be a resident of Norwich Hospital, and his condition has improved to a point where he is now employed on a full-time basis. Presumably, since June 30, 1972, the bankrupt has been paying the state for his care since no claim was made for services after that date. He was adjudicated on March 8, 1974. The schedules filed in the bankruptcy case list the obligation to the State of Connecticut in the amount of \$1,623.65. The last date for filing an application to determine dischargeability was fixed as April 30, 1974.

The State of Connecticut, by application filed April 17, 1974, objected to the inclusion of its bill in the schedules. The application was drawn by the Director of the Commission of Finance and Control who, apparently, is not an attorney. The application did not clearly set forth a legal claim for relief under any section of the Bankruptcy Act, although it appeared to seek nondischargeability of the debt as authorized by § 17a. As permitted by Bankruptcy Rule 409(2), the court sua sponte extended the time for filing a complaint to determine dischargeability to May 24, 1974. Through inadvertence, the bankrupt was not advised of the extension. A complaint was filed on May 21, 1974. The complaint did not refer to any specific clause of § 17a, merely setting forth the facts and praying for an order declaring the debt nondischargeable and for judgment in the amount of \$1,623.65. The bankrupt filed a Motion to Dismiss alleging the complaint did not set forth a cause of action recognizable under § 17a and for the further reason that the complaint was not timely filed. The latter ground was not pressed when counsel was advised that the court had in fact extended the time within which to file its complaint as to dischargeability but had neglected to advise counsel for the bankrupt.

The issue then is whether the debt of the state is nondischargeable under any of the provisions of the Act. The state argues in its brief:

"It has been well settled that a discharge in bankruptcy did not affect the right of the state as a creditor, State v. Shelton, 47 Conn. 400 (1879) before the Act was amended to except taxes of the Federal and local State government from discharge."

This was good law seventy-six years ago. Collier on Bankruptcy succinctly meets this challenge:

"Prior to the Act of 1898, it was held that all debts due to the United States and to the states although not specially excepted were not dischargeable (citing United States v. Herron 20 Wall 251, 22 L. Ed. 275; and State v. Shelton (supra)). But by virtue of the express change of the purpose of the Act of 1898, with reference to debts due the United States or a state or subdivision thereof, such obligations are now dischargeable." 1A Collier on Bankruptcy, Par. 17.13.

It is unnecessary to belabor the point. A discharge now releases the bankrupt from all debts due to a governmental agency other than taxes due and owing within three years preceding bankruptcy. §17a(1).

The matter of the dischargeability of debts is governed by Section 17a of the Act which provides:

"A discharge in bankruptcy shall release a bankrupt from all of his provable debts...(with eight enumerated exceptions such as taxes)."

As to what are provable debts, § 63 provides in pertinent part that:

"a. Debts of the bankrupt may be proved and allowed against his estate which are founded upon (1) a fixed liability, as evidenced by a judgment or an instrument in writing, absolutely owing at the time of the filing of the petition by or against him, whether then payable or not.... (or)

"(4) An open account, or a contract express or implied;.... (or)

"(8) Contingent debts and contingent contractual liabilities:...."

Counsel for the state argues that because, under the provisions of Section 17-295 of the Connecticut General Statutes, the amount of the obligation which is require to be paid to the state is flexible depending on the capacity of the debtor to pay, it is not fixed and absolutely owing, and, therefore, is not provable. Counsel cites State of Connecticut v. Chester Murzyn, Sr., et al, 142 Conn. 329 (1955) as authority. That decision held that the debt of the father of a patient in a state humane institution for the support of that patient was not dischargeable in bankruptcy because the obligation was not founded on a fixed liability, and, therefore, was not provable under Section 63a(1) of the Act. Since it was not provable, it was held to be not dischargeable under Section 17a(1). The court failed to note that under § 63a(1), the fixed liability was required to be "evidenced by a judgment or an instrument in writing" which, so far as appears in the decision, was not the case in Murzyn. The facts in that case are distinguishable from those in the instant case in that the Murzyn case was considering the statutory obligation of a relative for the support of an indigent person who received service in a state humane institution. The court in Murzyn in addition to misreading § 17a(1) by lifting a portion of the subsection out of context overlooked or disregarded other relevant clauses of § 17a. Section 17a(7) provides that "A debt for maintenance or support of wife or child...." is not affected by a discharge. The court might have relied upon § 17a(7) in declaring the debt nondischargeable, although the better view is that "this clause covers only the liability of a husband and father for support of wife or child and does not cover

this liability to third parties for necessities furnished for wife or child." General Protestant Home v. Ivey 240 F2d 239 (6th Cir. 1956). See 1A Collier on Bankruptcy, Par. 17.19.

In the instant case, the obligation was for the support of the bankrupt, rather than one for support of wife or child, distinguishing the Murzyn case in that regard. Nothing in Section 17a renders nondischargeable a debt which is owing by a bankrupt for his own maintenance or support. The court in Murzyn relied exclusively on § 17a(1), finding the debt not provable under § 63a(1) and, therefore, not dischargeable. The state, in the instant case, takes the same position.

The basic question, therefore, is whether the obligation of the bankrupt for services rendered to him by the state prior to the date of adjudication constitutes a provable debt. Murzyn (supra) decreed that an obligation under § 1147c of the 1953 Cumulative Supplement to the Connecticut General Statutes (the predecessor of Section 17-295) is not a fixed obligation and, therefore, not provable under § 63a(1) of the Bankruptcy Act. Since the obligation was not evidenced by a judgment and there was no evidence of a written instrument, the conclusion of the court as to the applicability of § 63a(1) was not correct but might have been justified for other reasons. Whether or not the decision was correct, it is not relevant to the instant case because it interpreted state statutes which were repealed in 1959. Stance v. Murzyn was relying on state statutes (§§ 1142c, 1147c, 1953 Cumulative Supplement) which were repealed and superseded by the relevant statutes in the instant case (§§ 17-295, 17-297). Section 1142c provided and § 17-295 provides that the recipient

of service is liable for support in accordance with his financial ability. However, the statutes differ as to the recipient's liability for the difference between what he is able to pay and the per capita cost. Section 1142c provided that:

"[n] either the billing nor the receipt of the per capita cost shall bar the commissioner from recovering ...the balance of the per capita cost remaining unpaid, or such part thereof as such person... is able to pay..." (Emphasis Added)

and Section 1147c provided that the state could recover

"For the balance of the per capita cost remaining unpaid, or such portion thereof as the court finds to be reasonably commensurate with the financial ability of such defendant..." (Emphasis Added)

In other words, the recipient remained liable for the difference between his billing and the per capita cost. This was the law that was interpreted in Murzyn(supra).

When the bankrupt became a patient at the Norwich State Hospital, the law had changed. No longer did the recipient of services remain liable for the difference between his billing and the per capita cost. Section 17-295c provides in pertinent part:

"Each patient...shall be legally liable from the date of admission for the support of such patient...in accordance with his ability to pay..."

Section 17-295g provides:

"The receipt of a lesser rate than the billed charges shall not bar the commissioner from recovering from any liable person...the balance of the charges billed to such person...remaining unpaid..." (Emphasis Added)

Clearly, the patient's legal liability is limited to the amount he is able to pay at the time of service, and the commissioner can only recover any portion of the amount of his billing which remains unpaid. This is reiterated in Section 17-298 which provides:

"When any person has been supported...by the State... and any portion of the charges for which such person or his liable relatives were liable under the provisions of Section 17-295 remains unpaid, such person... shall be liable to the State therefor...Said court may render judgment against the defendant for the balance of the charges remaining unpaid for which such defendant (is liable)..."

No longer is the patient (or his relatives) liable for a recomputation of the difference between the amount he was billed and the per capita cost as was formerly the case. If the patient's circumstances change and he is able to pay a larger portion of the per capita cost, the order may be amended, and his legal liability from that point forth may be in a larger amount, but the statute no longer gives the commissioner the power retroactively to increase the liability of the patient beyond his ability to pay at the time the service is rendered.

This change from the former statutory position was consistent with a liberal policy adopted by the legislature when Section 17-295 was amended in 1959. Other changes provided that parents were only to be responsible for children under the age of 18 years of age and children were to be responsible only for parents under the age of 65 years of age. A further provision excused responsible relatives after support had been paid for 16

years. At any rate, relating the statute to the instant case, the bankrupt's liability under any circumstances was limited by the statute to the amount he was able to pay. This amount, as determined by the commissioner, was included in his billing which at the date of his adjudication amounted to \$1,623.65. Although the commissioner has the right to adjust the amount that the patient is legally liable to pay, such an adjustment is not retroactive as was the case under former Section 1142a. It is effective only as to prospective liability of the patient. State v. Murzyn, at best, is questionable authority; and since it was predicated upon a statute which had been repealed prior to the period during which the bankrupt was a patient at the Norwich State Hospital, it is no longer authority for the principle enunciated.

The court in Murzyn apparently assumed that if a claim was not provable under any clause of § 63, it was not provable under any other clause. That is incorrect. Section 63 enumerates nine alternative categories of debts which are provable. It reads:

"a. Debts of the bankrupt may be proved and allowed against his estate which are founded upon (1) a fixed liability...; (2) costs taxable...; (3) a claim for costs taxes...; (4) an open account...; (5) provable debts reduced to judgment...; (6) an award...; (7) the right to recover...; (8) contingent debts...; or (9) claims...etc."

The conjunction "or" between (8) and (9) clearly indicates that a claim may be provable under any of the alternative subsections. The court completely overlooked a more relevant subsection of § 63a. Section 63a (4) provides:

"Debts of the bankrupt may be proved and allowed against his estate which are founded upon... (4) an open account, or a contract express or implied;"

Was the bankrupt's obligation founded upon an open account or a contract express or implied? As recently as June 20, 1974, the Department of Finance and Control of the State of Connecticut wrote to the bankrupt as follows:

"A recent audit of our accounts receivable for institutional care, indicates an unpaid balance of \$1,623.65 due for your care and treatment at Norwich Hospital. You were billed at the rate of \$4.57 against Social Security benefits, which should have been applied toward hospitalization costs.

"Please forward your remittance of the balance due in full, or make some definite and satisfactory arrangement within ten (10) days, for paying off this indebtedness. We would be happy to arrange some sort of monthly payment plan should you desire to pay off your account in that way." (Emphasis Added)

The state introduced as an exhibit a photocopy of an itemized statement dated April 2, 1974 which contained the following notations:

<u>ITEMIZED STATEMENT</u>				<u>April 2, 1974</u>		
<u>Date</u>		<u>No. of Days</u>	<u>Rate</u>	<u>Charges</u>	<u>Payts.</u>	<u>Bal. Due</u>
<u>From</u>	<u>To</u>					
11/1/70	2/28/71	45	\$4.15	\$ 136.75		
1971	March	29	\$4.15	\$ 120.35		
	April	3	\$4.15	\$ 12.45	\$70.00	
	June	6	\$4.565	\$ 27.39		
7/11/71	12/31/71	113	\$4.565	\$ 515.86		
1/1/72	6/30/72	182	\$4.565	\$ 830.85		
				<u>\$1, 693.65</u>	<u>\$70.00</u>	<u>\$1,623.65</u>

Clearly, the State of Connecticut in its letter of June 20, 1974, considered the account an open account. What else could the bankrupt's "unpaid balance" be? Why else would the State invite a schedule of monthly payments "to pay off your account"? The

parties are in clear agreement as to the amount owed. It would be difficult to find a more perfect example of an account stated on an open account. The State of Connecticut apparently agrees because on April 17, 1974, it filed a proof of claim in the amount of its claim, \$1,623.65 and in its complaint actually requested judgment for \$1,623.65!

The second clause of Section 63a(4) makes a debt provable if it is founded upon "a contract express or implied". 3A Collier on Bankruptcy in Para. 63.24, says:

"The term 'implied contract' includes both contracts implied in law, which are more frequently called 'quasi-contracts' and contracts implied in fact. The latter grew out of the expressed intentions of the parties and are a judicial construction of what the parties expressly agree upon. The former are more in the nature of a legal fiction, a judicial technique to justify and explain certain consequences that should in fairness and equity follow from certain facts other than an expressed intent."

In Salvo v. Doran, 18 F.2d 83, 9 Am. B.R. (N.S.) 694 (3rd Cir. 1927) the court said:

"Quasi-contractual obligations are such as reason and justice dictate and which the law presumes that every man, in justice, has contracted to perform and upon this presumption makes him answerable to the person who has suffered by his nonperformance. Such contracts include obligations imposed by law upon a person to give value for a benefit conferred when it appears that the benefit was not intended as a gratuity."

In Brown v. O'Keefe, 57 S. Ct. 543, 33 Am. B.R. (N.S.), P. 369 (1937), the bankrupt was the owner of shares of stock in a bank which had become insolvent. By statute, shareholders were subject to an assessment which the court held was a provable claim against the estate. The court said:

"There is argument that a claim against a stockholder is not provable in bankruptcy for the reason that it is founded on a statutory liability not subject to discharge. Bankruptcy Act, § 63, 11 U.S.C.A., § 103. True indeed it is that the liability is created by a statute, and not solely by agreement. (Cases Cited) No disclaimer by the stockholder would be effective to avoid it. Even so, the liability, created though it is by statute, is quasi-contractual in its origin and basis. (Cases Cited). It is an incident affixed by law to the contract of membership between shareholder and bank. Ibid. A liability upon quasi-contract is one upon an 'implied contract', and so provable in bankruptcy (cases Cited), if the other conditions of allowance are found to be fulfilled." (Emphasis Added)

The liability of the bankrupt imposed by Section 17-295 of the General Statutes of Connecticut under the foregoing is clearly an implied contract to pay for the services rendered. It does not appear that the bankrupt signed any agreement when he was admitted to the hospital. Possibly, he did, in which event, the obligation would be an express contract. Under any circumstances, the debt of the State of Connecticut will be provable under Section 63a(4) unless the State's contention that the claim is contingent and incapable of liquidation is borne out. Incidentally, this is the only theory which could remotely justify the decision in Murzyn.

The state does not claim that the liability is contingent but merely the amount of the obligation which will fluctuate with the ability of the bankrupt to pay. The cases cited by the state pre-date the enactment of Section 63a(3) in 1938 which renders provable "contingent debts and contingent contractual liabilities". Matter of Mullins Clothing Co., 238 Fed. 58, 38 Am.B.R. 189, cert. den. 243 U.S. 635 defined a contingent claim as follows.

"A contingent claim is one as to which it remains uncertain at the time of the filing of the petition in bankruptcy, whether or not the bankrupt will ever become liable to pay it. If it is certain that he is liable to pay it, although it may be uncertain how much he will have to pay, the claim is unliquidated but it is not contingent."

The only restriction on the provability of contingent claims is found in Section 57d of the Act which provides:

"...an unliquidated or contingent claim shall not be allowed unless liquidated or the amount thereof estimated in the manner and within the time directed by the court; and such claim shall not be allowed if the court shall determine that it is not capable of liquidation or of reasonable estimation or that such liquidation or estimation would unduly delay the administration of the estate or any proceeding under the Act."

This restriction poses no practical problem. As stated above, the obligation is not contingent, and the amount claimed by the state is fixed, to wit, \$1,623.65. If any question were raised about the amount of the state's proof of claim, this court would have no problem with the requirements of Section 57d. In the instant case, the liability was not contingent, nor was the amount of the debt unliquidated at any point in time. Since the debt might fluctuate in the future depending on the patient's ability to pay, it was flexible but only as to the future. As to the present or past, it was both fixed and liquidated.

The court finds that even though the obligation might not be founded upon a judgment or an instrument in writing to qualify under § 63a(1), the debt, nevertheless, was fixed and provable under the provisions of § 63a(4) as an open account as well as a liquidated obligation based on an implied contract.

To declare the bankrupt's obligation to the State of Connecticut nondischargeable would do violence to one of the basic tenets of the Bankruptcy Act--the opportunity for rehabilitation. In the early case of Davis v. Aetna, 293 U.S. 328, 55 S. Ct. 151, 79 L. Ed. 393 (1934), the court, concerned with a dealer who sold automobiles without obtaining the prior consent of the finance company as required by security documents, held there was no willful and malicious conversion and discharged the debt. In 1A Collier on Bankruptcy, Par. 17.09, there is an extended discussion of the problem. Davis v. Aetna is cited with approval. The text continues by stating:

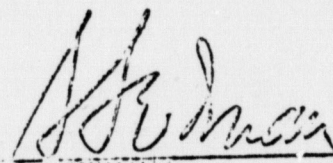
"The basis of the liberal rule of construction relative to conversion lies in the object and intention of Congress in enacting the Bankruptcy Law, to afford to the honest citizen a method of relieving himself of the burden of hopeless insolvency". (Citing Neal v. Clark, 95 U.S. 704, 24 L. Ed. 586). (Emphasis Added). See also Frederick v. Lines, 400 U.S. 13 (1970).

What a paradox it would be to discharge a debt arising out of a nonmalicious conversion by a man in business and declare nondischargeable the bill for medical services rendered to an indigent who was unable to work for a period of several years! Given the oft-stated objective of the Bankruptcy Act to give the honest debtor a new lease on life, it would be anomalous indeed if the bankruptcy court were to accept the theory of the State of Connecticut. For all time, the bankrupt having obtained a discharge in bankruptcy would have hanging over him the spectre of

the State of Connecticut seeking to renegotiate its debt for services rendered years before after the bankrupt had started a new life and, hopefully, at long last, was earning his way. Luckily, the legislature of the State of Connecticut took that power away from the Commissioner when § 17-295 was enacted in 1959. The obligation of the State of Connecticut is held provable and dischargeable, and it is

SO ORDERED.

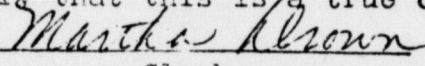
Dated at Hartford, Connecticut, this 15th day of August, 1974.


 SAUL SEIDMAN
 BANKRUPTCY JUDGE

cc: Edward F. Pasiecznik, Asst. Attorney General, 90 Brainard Road, Hartford, Connecticut, Atty. for Plaintiff and

Katalin Roth, Esq., Univ. of Conn. School of Law Legal Clinic, 1800 Asylum Ave., West Hartford, Conn. 06117, Attorney for Defendant

I certify that this is a true copy.

Attest: 
 Clerk

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

IN THE MATTER OF

LEONARD CRISP,

Bankrupt

STATE OF CONNECTICUT,
COMMISSIONER OF FINANCE AND
CONTROL

Bankruptcy No. H-74-111

Plaintiff

v.

LEONARD CRISP,

Defendant

PLAINTIFF, STATE OF CONNECTICUT'S APPEAL
FROM DISCHARGE OF DEFENDANT, LEONARD CRISP

I. The plaintiff respectfully requests that the record on appeal include the following:

- (a). Defendant's petition filed March 3, 1974.
- (b). Defendant's Chapter XIII Statement.
- (c). Court order for first meeting of creditors and fixing times for filing objections to discharge and for filing complaint to determine dischargeability of certain debts, combined with notice thereof and of automatic stay.

d). Plaintiff's proof of claim.

e). Letter from Saul Seidman, Bankruptcy Judge, dated May 13, 1974 extending time to file complaint to declare a debt non-dischargeable.

f). Plaintiff's complaint objecting to discharge of defendant filed May 21, 1974.

g). Letter from Saul Seidman, Bankruptcy Judge dated May 21, 1974 requesting Court reporter fee of \$33.00.

h). Summons and notice of trial dated May 21, 1974, and affidavit of service dated June 5, 1974.

i). Discharge of Brankrupt notice dated June 4, 1974.

j). Notice of Reassigned hearing dated June 10, 1974.

k). Motion to Dismiss dated July 2, 1974.

l). Plaintiff's brief and claims of law submitted July 18, 1974, and exhibit of per capita costs.

m). Defendant's Memorandum dated August 1, 1974.

n). Plaintiff's Supplemental brief and claims of law dated August 9, 1974.

o). Memorandum and Order Re: Dischargeability, dated August 15, 1974.

II. The plaintiff respectfully requests that the following facts be found:

- a). The defendant, Leonard Crisp, filed a petition in the Bankruptcy Court, seeking to be adjudged a bankrupt and be discharged from the claim of the State of Connecticut for care furnished him at a state maintained humane institution, Norwich Hospital, in the amount of \$1,623.65.
- b). The rate of billing the defendant was based upon his ability to pay, which was less than the per capita rate pursuant to Section 17-295 of the General Statutes of Connecticut.
- c). The State of Connecticut, acting through its Commissioner of Finance and Control filed its objection to discharge of the defendant from its claim as not being provable.
- d). The State of Connecticut, acting through its Commissioner of Finance and Control filed its objection to discharge of the defendant from its claim as a sovereign protected by the Eleventh Amendment of the United States Constitution.
- e). The Bankruptcy Court, discharged the claim of the State of Connecticut, prior to a hearing of its objection to discharge.
- f). The defendant was billed for care furnished him at a state maintained humane institution, pursuant to Section 17-295 of the

General Statutes of Connecticut, which did not authorize him to sue the State of Connecticut to be determined a bankrupt or be discharged in law or equity from the amount billed.

g). The defendant's liability and amount of the obligation under Section 17-295 of the General Statutes of Connecticut for care furnished him at the Norwich Hospital, a state maintained humane institution, is based upon his present and future ability to pay, as provided in Section 17-295b of the General Statutes of Connecticut.

h). The defendant's obligation to pay the State of Connecticut for the care furnished him at Norwich Hospital, is imposed by statutory authority in accordance with his ability to pay for said care presently or in the future up to a maximum rate of the per capita costs.

i). The plaintiff, State of Connecticut, has no contractual agreement with the defendant to furnish him care at a state maintained humane institution at any fixed or contingent rate.

III. The plaintiff respectfully submits that the issues raised by this appeal are the following:

a). Whether Leonard Crisp may be adjudged a bankrupt and have a claim of the State of Connecticut, for care furnished him at a

state maintained humane institution, discharged in the bankruptcy court?

b). Whether the claim of the State of Connecticut, against Leonard Crisp, for care furnished him at a state maintained humane institution, pursuant to Section 17-295 of the General Statutes of Connecticut, is provable under the bankruptcy act?

c). Whether the claim of the State of Connecticut, against Leonard Crisp, for care furnished him at a state maintained humane institution, pursuant to Section 17-295 of the General Statutes of Connecticut, can be discharged by the bankruptcy court, without permission of the sovereign State of Connecticut.

d). Whether the Eleventh Amendment of the United States Constitution prohibits the bankruptcy court from discharging the claim of the State of Connecticut against Leonard Crisp, who was not granted permission to institute the bankruptcy action by the State of Connecticut, as sovereign?

PLAINTIFF, COMMISSIONER OF FINANCE
AND CONTROL, STATE OF CONNECTICUT

ROBERT K. KILLIAN
ATTORNEY GENERAL

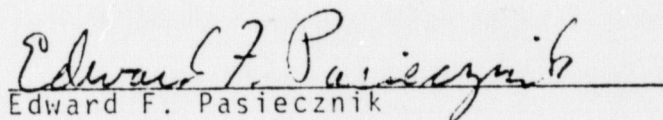
BY Edward F. Pasiecznik
EDWARD F. PASIECZNIK
Assistant Attorney General

90 Brainard Road
Hartford, Connecticut 06114

CERTIFICATION

I hereby certify that a copy of the foregoing Plaintiff, State of Connecticut's Appeal from Discharge of Defendant, Leonard Crisp, was forwarded on the 4th of September 1974, to the following counsel of record:

Katalin Roth, Esquire
Legal Clinic
School of Law
University of Connecticut
Greater Hartford Campus
West Hartford, Connecticut 06117


Edward F. Pasiecznik

Attorney for the Plaintiff

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

OFFICE OF THE CLERK

UNITED STATES COURTHOUSE

450 MAIN STREET

HARTFORD 06103

WILLIAM D. TEMPLETON

DEPUTY-IN-CHARGE

HARTFORD

SYLVESTER A. MARKOWSKI
CLERK

October 24, 1974

RE: PLAINTIFF, STATE OF CONNECTICUT'S APPEAL FROM DISCHARGE OF
DEFENDANT, LEONARD CRISP

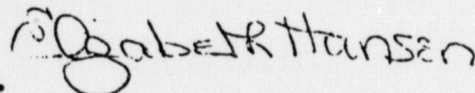
NOTICE TO COUNSEL

The Petition for Review filed in Bankruptcy No. H-74-111 has been submitted to Judge Clarie to whom this case has been assigned. Briefs have been filed by both the Appellee and the Appellant.

Judge Clarie will not hear oral arguments unless counsel for either side requests an opportunity for oral argument in order to present additional evidence or testimony. Any request for oral argument should be made by letter to the Clerk's Office at Hartford. If no request for an oral argument is made by November 1st, the matter will be decided on the papers.

SYLVESTER A. MARKOWSKI, Clerk

By:



Deputy Clerk

CC: ✓ Edw. F. Pasiecznik, Asst. Atty. General
Katalin Roth, Esq., School of Law, U. of Conn.

xxxxxxx
xxxxxxxxxxxxxx

90 Brainard Rd.
Hartford, Conn. 06114 Tel. 566-7071

October 30, 1974

Honorable T. Emmet Clarie
Judge, U.S. District Court
450 Main Street
Hartford, Conn. 06103

Re: Plaintiff, State of Connecticut's Appeal from
Discharge of
Defendant, Leonard Crisp
BANKRUPTCY NO. H-74-111

Dear Judge Clarie:

Pursuant to notice dated October 24, 1974, I am requesting the opportunity to submit evidence and testimony regarding the appeal before the court as an opportunity for oral argument.

Very truly yours,

ROBERT K. KILLIAN
ATTORNEY GENERAL

By
Edward F. Pasiecznik
Assistant Attorney General

EFP:eca
cc: Katalin Roth, Esquire

Letter Dated June 20, 1974 from Henry W. Marsh III to Leonard Crisp as original was filed with the Court as an exhibit, and no copy in counsel or local court file, so that no copy is available to attach as an exhibit.

18 1974
FOR IDENTIFICATION ☐
U.S. DISTRICT COURT
DISTRICT OF CONN.

DIVISION OF CENTRAL COLLECTIONS
NORWICH, CONNECTICUT 06360

June 20, 1974

Mr. Leonard
43 Broadway
Norwich, Conn. 06360

RE: CRISP, Leonard
13-038,598-1

Dear Mr. Crisp:

A recent audit of our accounts receivable for institutional care, indicates an unpaid balance of \$1,623.65 due for your care and treatment at Norwich Hospital. You were billed at the rate of \$4.57 against Social Security benefits, which should have been applied toward hospitalization costs.

Please forward your remittance of the balance due in full, or make some definite and satisfactory arrangement within ten (10) days, for paying off this indebtedness. We would be happy to arrange some sort of monthly payment plan should you desire to pay off your account in that way.

Enclosed is a self-addressed envelope for your convenience in making payment.

Thank you for your cooperation in this matter.

Should you have any questions, please call me at 889-8488, between the hours of 8:30 A.M. and 4:00 P.M.

Very truly yours,

LEONARD A. KRASHEFSKI, Manager
Division of Central Collections

Henry W. Marsh III
By: HENRY W. MARSH III, Investigator

HM:rsb
enc.

Document #13

1 C H A R L E S B . R O A R K , appearing as a witness,
2 being duly sworn, testified as follows:

3 THE CLERK: Would you state your full name?

4 THE WITNESS: Charles B. Roark.

5 THE CLERK: Your address?

6 THE WITNESS: Business or residence?

7 THE CLERK: Business.

8 THE WITNESS: 76 Meadow Street, East Hartford.

9 DIRECT EXAMINATION BY MR. PESIECZNIK:

10 Q Mr. Roark, by whom are you employed?

11 A State of Connecticut.

12 Q In what capacity?

13 A Director of the Division of Central Collection,
14 Department of Finance and Control.

15 Q Now, in that capacity, are you familiar with the
16 current charges that were billed against Leonard Crisp?

17 A Yes, I am.

18 Q Please explain the difference between the current
19 charges and per capita costs, as regarded to Leonard Crisp's
20 billing.

21 A Current charges would be those charges assessed a
22 patient or resident of the State Institution, based upon his
23 ability to pay at the time of hospitalization.

24 Per capita cost is the total cost of that particular
25 institution, taking care of each patient or resident.

1 Q Now, what is your authority for the discharge for
2 current costs?

3 A Section 17-295, Sub-Section (b) establishes the
4 rates to be charged patients or legally liable relatives.

5 MR. PASIECZNIK: I will offer these various
6 statutes for the convenience of the Court.

7 THE COURT: The Court will take judicial notice
8 of them. We have a copy of the statute, so it
9 isn't necessary.

10 MR. PASIECZNIK: Very good. I thought it might
11 be easier for your Honor to have them in the file,
12 for your information, if nothing else.

13 THE COURT: If you want to offer them for that
14 purpose I don't think counsel will have any objec-
15 tion.

16 BY MR. PASIECZNIK:

17 Q Now, does this billing for current charges limit
18 your obtaining more money from Mr. Crisp at a later date?

19 A In this particular instance, no, since we did not
20 charge that individual per capita costs.

21 Q What determines the additional amount you can re-
22 cover from Mr. Crisp?

23 A The maximum rate we recover from any individual,
24 including Mr. Crisp, is in per capita costs determined for the
25 care of these patients.

1 Q And when do you determine whether the liability is
2 increased, as far as a patient is concerned?

3 A Are you talking about after discharge?

4 Q Yes, after discharge.

5 A If that particular individual has been discharged
6 and has not been billed and paid the total per capita cost,
7 he can be subject to any unpaid charges, providing that there
8 is sudden, unexpected wealth that he comes into at a later
9 date, or upon death, even there is a priority claim against
10 his estate for any unpaid charges.

11 Q What is your authority to make that determination?

12 A If you are talking about --

13 Q Statutory authority.

14 A Unpaid charges, 17-295(b) gives us the right to
15 recover for past unpaid charges.

16 Q Is that distinguished from 17-295, sub-section (b)?

17 A Yes, it is. And 17-300 gives us the right to file a
18 claim against the estate.

19 Q Now, do you charge per capita costs less payment
20 against each person or estate?

21 A No, we do not.

22 Q What determines the amount to be charged each person
23 or his estate, in addition to current charges?

24 A His ability to pay at all times.

25 Q So that in this particular case, the State charged

1 Mr. Crisp less than the per capita cost?

2 A Yes, sir.

3 Q And what would that billing itself be based on, for
4 current costs, in Mr. Crisp's case?

5 A Based upon his ability to pay at the time, his
6 Social Security or disability benefits.

7 Q So were you aware of the amount of Social Security
8 that was paid to Mr. Crisp during this time period?

9 A Yes, sir.

10 Q And you billed him accordingly?

11 A Yes.

12 MR. PASIECZNIK: No more questions.

13 THE COURT: Any questions, Counselor?

14 MR. PASIECZNIK: Excuse me, just one more point.

15 BY MR. PASIECZNIK:

16 Q Do you have the per capita costs for that period
17 that you billed Mr. Crisp?

18 A Yes, I think I know it, yes, sir.

19 Q Do you have a copy available?

20 THE COURT: He says he knows it. What is it?

21 THE WITNESS: For the period of time between
22 September, 1970 and November, '71, which is our
23 particular billing cycle for our particular billing
24 year, the rate was \$24.096 per day. For the re-
25 maining period of time, the rate was \$29.46 a day.

1 Q And what was Mr. Crisp charged?

2 A For the first part of his confinement, \$4.15 a day;
3 for the second part, \$4.565 a day.

4 Q What was the amount that the current charges totaled
5 under that particular billing?

6 A I think it was in the neighborhood of \$1,800.

7 Q Sorry?

8 A I think in the neighborhood of \$1,800.

9 Q You are not sure of it precisely?

10 A I have a copy in my case file, I believe.

11 Q I show you a letter. Does this refresh your recollec-
12 tion?

13 A \$1,600 referred to here is the unpaid balance of
14 this current charge. I think that that, plus a payment of
15 \$90 or \$70 would be the total charges. That is the net amount
16 due from individuals.

17 And I think there was a \$90 payment. So, you add
18 those two together, and that would be your actual current
19 charges.

20 Q So that the debt seeking to be discharged at this
21 time was a debt based on current charges?

22 A Yes, sir.

23 Q Does your Department -- you mentioned earlier
24 dealing with an individual coming into sudden wealth. If Mr.
25 Crisp came into sudden wealth, you would seek to recover per

1 capita cost charges against him?

2 A If we became aware of Mr. Crisp coming into any
3 sudden or unexpected wealth, other than normal employment,
4 we would seek to recover from him or his estate the unpaid
5 charges.

6 Q That would be for the same period that is covered
7 by the current charges?

8 A Yes, sir.

9 Q And what determines the amount to be covered?
10 Suppose Mr. Crisp had insufficient monies in his sudden
11 wealth to cover the per capita cost? Would you proceed to
12 go against Mr. Crisp to recover as much as the per capita cost
13 as you could?

14 A Yes, sir, but not in excess of the per capita costs.

15 MR. PASIECZNIK: Thank you.

16 THE COURT: Anything new from this witness,
17 Counselor, that isn't apparent on the record?

18 MS. ROTH: Your Honor, I think we would ask
19 him one or two questions, if I may have just a
20 moment.

21 CROSS-EXAMINATION BY MR. McCOY:

22 Q You indicate that your authority for retroactively
23 redetermining the billing rate for Mr. Crisp is 17-295(b);
24 is that correct?

25 A Yes, sir.

1 Q Would you read to me from 17-295, and tell me where
2 your authority is?

3 A You have the wrong section, sir.

4 Q These were the copies of the statute?

5 A That doesn't cover -- 17-295(b) -- that doesn't
6 cover it.

7 Do you wish me to read this out loud, sir?

8 Q Please.

9 A "A patient who is receiving or has received care in
10 a State humane institution, his estate or both shall be
11 liable to reimburse the State for any unpaid portion of per
12 capita cost to the same extent as the liability of a public
13 assistance beneficiary under Section 17-83(c) and 17-83(g),
14 subject to the same protection of a surviving spouse or de-
15 pendent child as therein provided."

16 Q What does Section 17-83(c) and (g) provide?

17 A The same basic thing: Anyone who receives aid or
18 assistance from the State is liable to reimburse the State for
19 total aid and assistance rendered.

20 Q I have here a letter from your office, I believe,
21 to Mr. Crisp. Are you familiar with that?

22 A Yes, sir.

23 Q Would you read from that, please?

24 A The whole letter?

25 Q Yes.

1 MR. PASIECZNIK: I think he can submit the
2 letter. I think your Honor can read the letter for
3 himself, rather than have him read the letter. It
4 is a useless occupation at this time.

5 I think if he wants to ask questions based on
6 the letter, he can ask him.

7 BY MR. McCOY:

8 Q In this letter it indicates an unpaid balance of
9 \$1,623.65, and there was a payment on that for \$70, was there
10 not?

11 A Before that balance -- that is the net balance.

12 Q Is there anything in this letter -- I will let you
13 see the letter again.

14 A I am aware of the letter, sir.

15 Q Is there anything in this letter that suggests that
16 you are going to retroactively increase this?

17 A No, sir, because that letter is predicated on
18 ability to pay at that time, at the time the charge was
19 assessed.

20 Q You said that the per capita cost provides a maximum
21 rate for billing; is that correct?

22 A Yes.

23 Q What is the per capita cost in this case?

24 A It all depends. The period you are talking about,
25 the first part was \$24.05 a day. Later it was \$29.46 a day.

1 Q But that is the maximum rate for billing, is it not?

2 A For that particular hospital, that particular
3 period.

4 THE COURT: So that it will be clear to me --
5 maybe this letter shows it, but in the event that
6 this bankrupt did fall into untold wealth, how much
7 is the maximum then that the State would claim from
8 him?

9 THE WITNESS: Up to the \$24.

10 THE COURT: I want to know how much is the
11 total.

12 THE WITNESS: I would estimate --

13 THE COURT: You must know, don't you?

14 THE WITNESS: I worked those figures out this
15 morning myself.

16 This section of --

17 THE COURT: Well, so that it will all be in
18 the record, get your pad and briefcase and the items,
19 and figure what it would be.

20 THE WITNESS: My folder is over there. It is
21 in my folder.

22 MR. McCOY: May we have that marked as Exhibit
23 A?

24 THE COURT: Certainly. Bankrupt's Exhibit A,
25 for purposes of this hearing, this new hearing.

1 (Plaintiff's Exhibit A: Letter dated June
2 20th, 1974 to Mr. Crisp.)

3 THE WITNESS: The first 165 days, at a daily
4 rate of 24.096 a day, is \$3,975.84.

5 THE COURT: \$3,974 --

6 THE WITNESS: No, \$3,975.84.

7 The remaining 213 days of his hospitalization,
8 at the rate of 29.46 is \$6,274.98, for a total of
9 \$10,250.82, less the \$70 payment, which leaves a
10 balance of \$10,180.82.

11 And if you discount the amount that we are
12 now --

13 THE COURT: \$10,180.82?

14 THE WITNESS: Yes. And if you discount the
15 balance we are now talking about, \$1,623.65, we
16 arrive at an unbilled charge amounting to \$8,557.17.

17 THE COURT: He hasn't paid the \$1,623?

18 THE WITNESS: No, sir.

19 THE COURT: And 65 cents?

20 And what are you discounting that for?

21 THE WITNESS: This is if someone, if this part
22 of the debt is dischargeable, we still have the
23 individual responsible for the balance.

24 THE COURT: For the difference?

25 THE WITNESS: Yes. But actually this man right

1 now has a potential liability of \$10,180.82.

2 THE COURT: But actually, you know, you can
3 tell me, and you have this now specifically, the
4 amount of that claim based on the per diem rate,
5 don't you?

6 THE WITNESS: Yes.

7 THE COURT: Right to the penny?

8 THE WITNESS: Yes.

9 THE COURT: So it is a specific debt, if you
10 want to claim it?

11 THE WITNESS: But only if this man comes into
12 the ability to pay. It doesn't become a debt
13 until he has the ability to pay. And this man does
14 not have the ability to pay that money.

15 THE COURT: All right, I see. That makes the
16 record clear.

17 BY MR. McCOY:

18 Q Did you file a proof of claim in the amount of
19 \$1,623, in the Bankruptcy Court?

20 A That was the debt this man had, yes, sir.

21 Q You filed a proof of claim for that amount?

22 A Yes, that was based on his ability to pay. Those
23 charges were assessed on his ability to pay at the time. And
24 until that man has an ability to pay that, there will be no
25 additional charge.

1 Q Why then did you file a proof of claim in that
2 amount?

3 A Because that is what that man had ability to pay at
4 the time of hospitalization. The man received the money, he
5 should have paid the obligation.

6 Q If in fact it wasn't a certain debt, why did you
7 file a proof of claim?

8 A It was a specific debt for that ability to pay.

9 THE COURT: Suppose he paid the debt?

10 THE WITNESS: He would not owe us the \$1,623,
11 and we would not let this individual have any money
12 unless he came into some unexpected wealth.

13 THE COURT: You'll only give him a conditional
14 receipt; is that it?

15 THE WITNESS: This is a receipt paid in full
16 for that particular amount, yes, sir.

17 THE COURT: What do you mean, paid in full for
18 that particular amount?

19 THE WITNESS: That is all we're charging that
20 man on his ability to pay. When he pays that amount,
21 in fact, his obligation ceases until he comes into
22 some other changing circumstances.

23 THE COURT: What kind of receipt do you give
24 him if he pays you?

25 THE WITNESS: It all depends. If it is cash,

1 it is a receipt; if it is by check, he gets his
2 cancelled check back.

3 THE COURT: And you put on "paid in full"?

4 THE WITNESS: No, sir.

5 THE COURT: Do you put a condition on it, paid
6 in full, except if you get some more money later
7 on, we are going to rebill you?

8 THE WITNESS: No, sir.

9 THE COURT: How do you do it?

10 THE WITNESS: We give him a receipt in cash,
11 showing the actual amount of money paid. There is
12 nothing to indicate it is a final payment in his
13 account.

2 14 THE COURT: I'd be interested in the legality
15 of this. By curiosity, do you know of any instances
16 where the State has billed a person for a particu-
17 lar amount, based upon their ability to pay, and
18 they paid it and they received a receipt for it,
19 and then five or six or eight or ten years later,
20 they have been rebilled for the difference?

21 THE WITNESS: Even twenty years later, sir.

22 THE COURT: Twenty years later?

23 THE WITNESS: Yes.

24 THE COURT: All right.
25

1 BY MR. McCOY:

2 Q I'm curious: You filed a proof of claim in the
3 amount of \$1,623. If he had paid that amount, or if in this
4 case the amount is discharged in bankruptcy, are you sugges-
5 ting that sometime later you can rebill him for another
6 amount, after the discharge?

7 A Yes, sir.

8 Q That seems to be quite a turn in the Bankruptcy
9 Act.

10 THE COURT: That is an argument that you may
11 make to the Court.

12 MR. McCOY: Okay.

13 Q I still have a certain amount of confusion about
14 your process of billing. You bill for that amount, then
15 some time later, without any notice at the time of payment of
16 \$1,600, you can rebill? Is that correct, under the statute?

17 A Yes, sir.

18 MR. McCOY: No more questions.

19 THE COURT: Anything further from this witness?

20 MR. PASIECZNIK: Just one particular point.

21 REDIRECT EXAMINATION BY MR. PASIECZNIK:

22 Q Mr. Roark, you were talking about rebilling or
23 giving the patient a receipt, paid in full. Were you talking
24 about paid in full for costs, or paid in full for charges?

25 A We don't give him a receipt for paid in full.

1 Q What is the determination as to the type of receipt
2 he receives?

3 A The receipt indicates the actual payment he made.
4 There is no reference to the balance on hand.

5 In other words, if you walk up -- let's assume this
6 man owes the \$1,623, and he or a representative walked in our
7 office with that much cash on his possession; he gets that
8 acknowledgement of that cash payment, X number of dollars,
9 and the account goes in.

10 If he were to send a check for that amount of money,
11 we'd process that check, and the cancelled check is his
12 receipt. But, there is nothing marked "paid in full".

13 MR. PASIECZNIK: All right, thank you.

14 THE COURT: Next witness.

15 (Witness excused.)

16 MR. PASIECZNIK: That's all.

17 THE COURT: Anything further, Counselor?

18 MR. PASIECZNIK: No, your Honor, except that if
19 we were at liberty to present arguments, in view of
20 the fact that as counsel pointed out, this is, in
21 effect, an appeal, the only arguments I would pre-
22 sent are in my brief, as such, and the unique argu-
23 ments that I call to your Honor's attention is the
24 Eleventh Amendment.

25 The Eleventh Amendment, barring the Bankruptcy

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

In the Matter of:	:	
LEONARD CRISP,	:	
Bankrupt	:	
STATE OF CONNECTICUT,	:	
COMMISSIONER OF FINANCE	:	
AND CONTROL,	:	
Appellant	:	
-vs-	:	Bankruptcy No. H 74-111
LEONARD CRISP,	:	
Appellee	:	

RULING ON PETITION FOR REVIEW

This case comes before the Court on an appeal or petition for review of an order of the Bankruptcy Judge, filed August 15, 1974. The Bankruptcy Court found that the claim of the State of Connecticut against Leonard Crisp for care furnished to him as a patient in a State Humane Institution was dischargeable in bankruptcy.

The State raises the question on review, whether or not the bankrupt's discharge is valid, on the following grounds:

(1) that the claim based on § 17-295 of the Connecticut General Statutes is not provable under the Bankruptcy Act;

(2) that the claim cannot be discharged without the permission of the sovereign State of Connecticut; and (3) that the

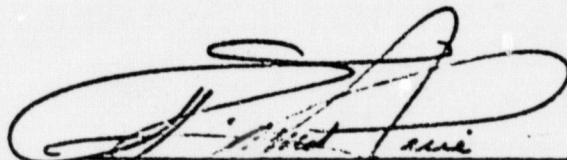
eleventh amendment to the United States Constitution prohibits the Bankruptcy Court from discharging the claim of the State of Connecticut.

The Court having carefully reviewed both the petitioner's and the bankrupt's briefs; considered the evidence submitted at the hearing and reviewed the entire record herein, and being of the opinion that the Petition for Review should be denied and that the order of the Bankruptcy Judge should be confirmed; it is

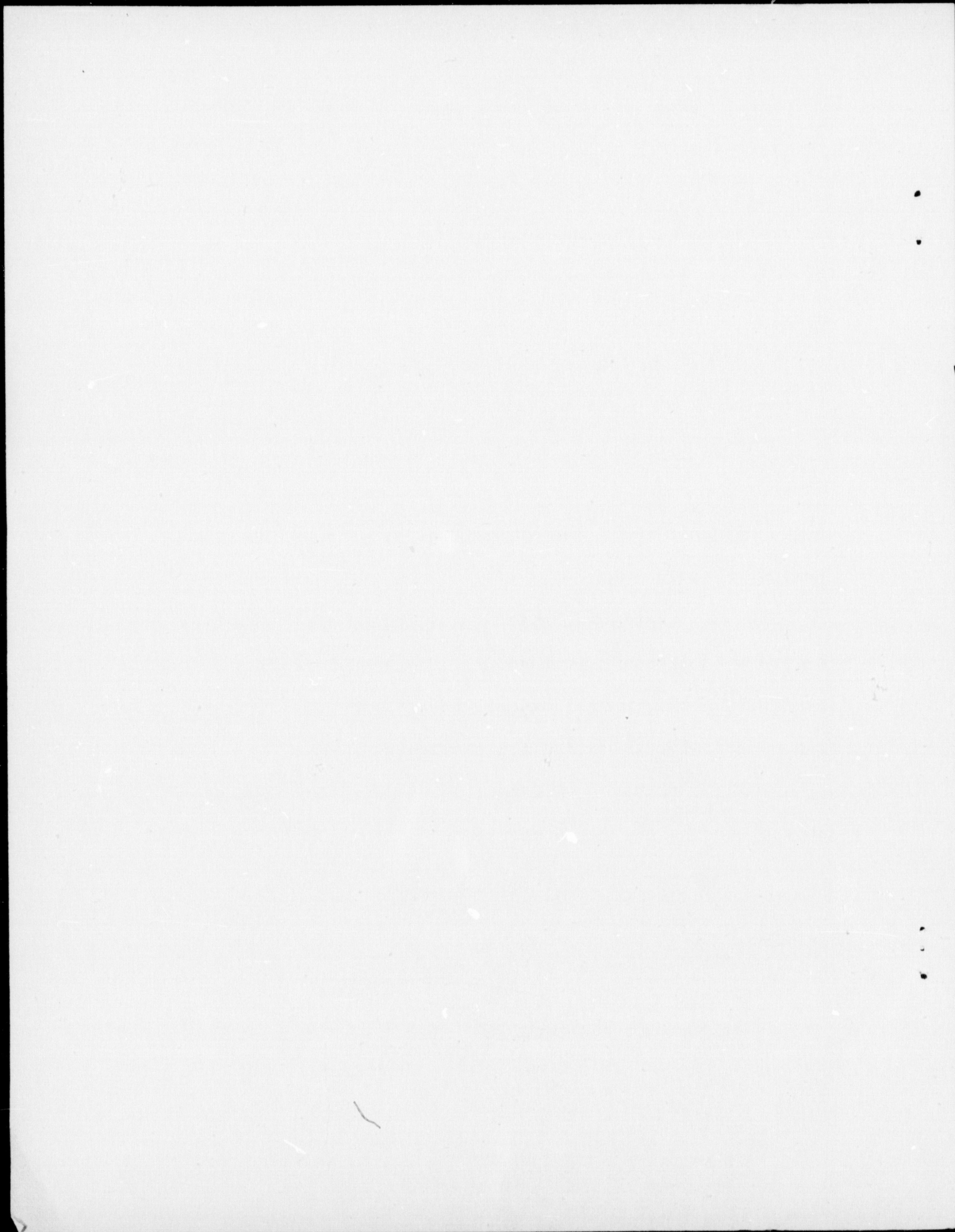
ORDERED: that said Petition for Review be, and the same is hereby denied and dismissed for the same reasons as are set forth in the Memorandum and Order of the Bankruptcy Judge filed August 15, 1974; and it is further

ORDERED: that said Order of the Bankruptcy Judge be, and the same hereby is, confirmed.

Dated at Hartford, Connecticut, this 21st day of November, 1974.



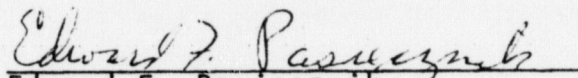
T. Emmet Clarie
Chief Judge



CERTIFICATION

I hereby certify that two copies of the foregoing
Joint Appendix were hand delivered to the following
counsel of record on the 12th day of March, 1975:

Kataline Roth, Esq.
Legal Clinic
School of Law
University of Connecticut
Greater Hartford Campus
West Hartford, Connecticut 06117


Edward F. Pasiecznik
Assistant Attorney General
90 Brainard Road
Hartford, Connecticut